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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

M.G.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

F057894

(Super. Ct. No. 07CEJ300268-1)

O P I N I O N

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Martin C. Suits, Commissioner.

Kenneth K. Taniguchi, Public Defender, and Alex R. Merriam, Deputy Public Defender, for Petitioner

No appearance for Respondent.

Kevin Briggs, Interim County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

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*Before Wiseman, Acting P.J., Levy, J., and Gomes, J.

Petitioner seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 18-month review hearing (Welf. & Inst. Code, § 366.22)[1] terminating his reunification services and setting a section 366.26 hearing as to his daughter, D., and son, M. We will deny the petition.

STATEMENT OF THE CASE AND FACTS

In November 2007, the juvenile court ordered then 10-year-old D. and 3-year-old M. detained from their mother, C.W.,[2] because of her drug use. Though C.W. did not know petitioner's specific whereabouts at the time, he was serving a two-year prison sentence for assault with a deadly weapon (not a firearm) and possession of a controlled substance. According to C.W., he maintained regular telephone contact with the children and visited them when he was able.

In December 2007, the juvenile court sustained a dependency petition filed by the Fresno County Department of Children and Family Services (department) on behalf of the children alleging C.W.'s drug use placed the children at risk of harm. The dispositional hearing was set for January 2008.

The dispositional hearing was continued several times and conducted in May 2008. Meanwhile, petitioner was released from custody in April and immediately requested visitation and services.

In an addendum report filed for the dispositional hearing, the department reported that petitioner was participating in a 52-week batterer's treatment program as a condition of parole, had completed a substance abuse evaluation and been referred for less-intensive outpatient substance abuse treatment and was scheduled to complete a domestic violence evaluation. Petitioner also requested unsupervised visitation and placement of

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

[2] C.W. also filed a writ petition, which this court dismissed (case No. F057928).

the children, but the department recommended against it until petitioner's progress could be more fully assessed.

In May 2008, at the dispositional hearing, the juvenile court exercised its dependency jurisdiction over D. and M. and ordered petitioner and C.W. to complete a parenting course, complete substance abuse, mental health and domestic violence evaluations and participate in recommended treatment and submit to random drug testing.

In July 2008, at the six-month review hearing, the juvenile court continued reunification services and scheduled the 12-month review hearing for December 2008. Meanwhile, in September 2008, petitioner met with his caseworker, Ms. Johnson, and agreed that he would contact a specific treatment center to arrange for outpatient treatment and attend three Alcoholics Anonymous/Narcotics Anonymous (AA/NA) meetings each week. On October 10, petitioner began treatment at the designated treatment center. Approximately a month later, the facilitator from the treatment center told Ms. Johnson petitioner was arriving to substance abuse classes on time but attended only four AA/NA meetings. Consequently, the facilitator was not allowing petitioner to participate in the classes.

Ms. Johnson spoke to petitioner about not attending AA/NA meetings. Petitioner stated he was trying but worked out of town during the week and did not return to town until after 6:00 p.m., which prevented him from attending AA/NA meetings. In addition, he was attending domestic violence classes on Saturdays. Ms. Johnson suggested he attend two AA/NA meetings on Sunday. Petitioner expressed frustration with working and participating in services but said he would do whatever was required to have custody of his children.

In early December 2008, Ms. Johnson met with petitioner to refer him again to the same treatment center and discuss the location of his visits. Petitioner agreed to re-enter the same treatment center and agreed on a location for visitation.

In its report for the 12-month review hearing, the department reported petitioner was scheduled to begin substance abuse treatment on December 8. In addition, petitioner's supervised visits with the children were going well and Ms. Johnson had not received any reports or concerns concerning visitation. Further, the department reported petitioner and C.W. were participating in all of their case plan requirements, and it anticipated they would begin family maintenance services by the 18-month review hearing.

On December 12, 2008, at the 12-month review hearing, the juvenile court found petitioner and C.W. made moderate progress in resolving the problems necessitating the children's removal. The court also found there was a substantial probability the children could be returned to parental custody and continued reunification services to the 18-month review hearing, which it set for April 2009.

By the time set for the 18-month review hearing, petitioner had completed the domestic violence program and the mental health evaluation and was not referred for mental health treatment. However, he did not re-enter substance abuse treatment and he did not drug test in April and May 2009. Prior to that, he was regularly testing negative with only an occasional failure to test. In addition, he was not attending his parenting classes and was missing visitation. Meanwhile, C.W. was testing positive for methamphetamine.

In light of petitioner and C.W.'s failure to comply with their case plan requirements, the department concluded neither parent demonstrated the ability to complete the objectives of their case plans and safely parent the children. Consequently, the department recommended the court find that it would be detrimental to return the children to either parent. The department also recommended the court terminate reunification services and set a section 366.26 hearing.

Petitioner opposed the department's recommendation. In a statement of issues filed for the 18-month review hearing, he argued there was insufficient evidence it would

be detrimental to return the children to his custody and requested that the court place the children with him.

The 18-month review hearing was conducted as a contested hearing in June 2009. Ms. Johnson testified petitioner's criminal history involving substance abuse and his failure to complete substance abuse treatment caused her concern for the children's safety if they were returned to his custody. She acknowledged petitioner never tested positive for drugs but pointed out that his missed tests were considered presumptively positive. Ms. Johnson further testified petitioner told her he missed a couple of drug tests because he worked out of town. In addition, she knew the testing facility is only open during the day but did not know what its business hours are. Ms. Johnson was also aware petitioner did not consistently visit the children because visits were scheduled during the day while he was out of town working.

Petitioner testified he began working as a ceramic tile setter the day after his release from custody. He said his daily work hours vary, but he generally works eight to nine hours a day. Additionally, his job site varies and has taken him as far away as San Diego and Los Angeles. When he works out of town, he stays overnight. He testified the drug testing laboratory was open from 7:00 a.m. to 6:00 p.m. and he voiced his concern a few times that he would not be able to make it in time to drug test. However, the social worker did not provide him alternative testing sites. He also stated visitation was scheduled for 4:00 p.m. every Wednesday and he was unable to attend sometimes because he was working out of town. He advised the social worker of his difficulty attending visitation but no accommodations were made. His work schedule also prevented him from attending the parenting class which was conducted at 1:00 p.m. on a weekday and substance abuse classes, which were conducted on a weekday evening at 6 p.m. Petitioner testified he could not attend all the required AA/NA meetings, which were held throughout the week and on weekends. He was able to complete the domestic violence program because the classes were conducted on Saturdays from 9:30 a.m. to

1:30 p.m. Petitioner also testified he drug tested as a condition of parole, which he did not violate.

Petitioner also testified he was ready to have D. and M. placed in his care. He had a three-bedroom house that he shared with his girlfriend and her 11 and 17-year old children. If the children were placed with him, he and his girlfriend would care for them.

Following argument, the juvenile court found the department offered petitioner reasonable services but that his progress was minimal. The court terminated reunification services for both parents and set a section 366.26 hearing. This petition ensued.

DISCUSSION

A. Detriment

Petitioner contends the juvenile court abused its discretion in finding he posed a substantial risk of harm to the children if they were placed in his custody. More specifically, he argues the department failed to present any evidence beyond a prima facie case to support a finding there was a continued necessity for out-of-home placement. Further, though he acknowledges not completing his entire case plan, the services he completed, he argues, should alleviate any risk of harm to the children if they were placed in his custody. Finally, he argues, the juvenile court erred in failing to set forth a factual basis for its conclusion the children's return would be detrimental to them. We find petitioner's contentions meritless.

Section 366.22, which governs the proceedings at the 18-month review hearing, required the juvenile court to return D. and M. to petitioner's custody unless it found by a preponderance of the evidence that their return would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. (§ 366.22, subd. (a).) The department bears the burden of establishing that detriment. (*Ibid.*) Consequently, the court is guided in making its determination by the department's assessment contained in its status report of parental efforts to utilize the services provided and the resulting progress. (*Ibid.*) Parental failure to regularly participate and make

substantive progress in court-ordered services constitutes prima facie evidence of detriment. (*Ibid.*)

Substantial evidence, not abuse of discretion, is the standard by which we review the juvenile court's finding of detriment. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) On the facts of this case, as summarized above, we conclude substantial evidence supports the juvenile court's detriment finding.

Petitioner's failure to participate in substance abuse treatment and parenting classes constitutes prima facie evidence that it would be detrimental to return the children to his custody. The fact that he completed other requirements of his case plan does not diminish the sufficiency of that evidence. Further, contrary to petitioner's assertion, prima facie evidence of detriment *is* sufficient to support the juvenile court's finding. Finally, the juvenile court's failure to articulate a factual basis for its finding of detriment does not constitute error. We may infer a required finding where, as here, it is supported by substantial evidence. (*In re Corienna G.* (1989) 213 Cal.App.3d 73, 83.)

B. Reasonable Services

Petitioner contends the department acted unreasonably in not scheduling visitation at a time when he could participate and not providing alternative sites for drug testing. Therefore, he argues, the juvenile court abused its discretion in finding he was provided reasonable services. We disagree.

Services are reasonable when the supervising agency identifies the family's problems, offers services targeting those problems, maintains reasonable contact with the parent(s), and makes reasonable efforts to assist in areas where compliance is difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) To be reasonable, the services provided need not be perfect. The "standard is not whether [they] were the best that might have been provided, but whether they were reasonable under the circumstances." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

We review the juvenile court's reasonable services finding for substantial evidence. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) On appeal, petitioner bears the burden of showing substantial evidence does not support the juvenile court's finding. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) For the reasons we will explain, we conclude petitioner failed to meet his burden.

At best, the appellate record establishes that petitioner's work schedule presented a potential conflict in that he could be out of town working and unable to return to visit the children or participate in drug testing. Several times, an actual conflict occurred and petitioner apprised Ms. Johnson. However, there is no evidence, aside from the several reported occasions, that petitioner's work schedule prevented him from visiting and drug testing. Consequently, petitioner has failed to show that his work schedule interfered so significantly with his ability to participate in these two services that the caseworker was unreasonable in not making an accommodation.

Further, there is evidence petitioner's work schedule was *not* a significant barrier to his ability to participate in visitation and drug testing. Petitioner was released from custody in April 2008 and, according to his testimony, he began working as a tile setter the day after his release. According to the record, he drug tested regularly beginning in May 2008 and he did not report any concerns about visitation. Had he been having difficulty participating in services, he could have raised reasonableness of services as an issue at the 12-month review hearing in December 2008. However, he did not. So, unless petitioner's work schedule created more of a conflict after December 2008, it does not fully explain his failure to visit the children and drug test during the period under review.

Further, even assuming we concluded the department was unreasonable in its provision of visitation and drug testing, we would not reverse the juvenile court's reasonable services finding in light of its provision of equally important services, i.e.

substance abuse services and parenting, the reasonableness of which petitioner does not challenge.

Based on the foregoing, we conclude substantial evidence also supports the juvenile court's reasonable services finding and we find no error on this record.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.